

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF PURCHASE PUBLIC	)	
SERVICE CORPORATION D/B/A CARDINAL GROUP	)	
FOR A RATE ADJUSTMENT PURSUANT TO THE	)	CASE NO. 95-081
ALTERNATIVE RATE FILING PROCEDURE FOR	)	
SMALL UTILITIES	)	

O R D E R

On March 2, 1995, Purchase Public Service Corporation d/b/a Cardinal Group ("Cardinal") filed an application for Commission approval of a proposed increase in its rates for sewer service pursuant to 807 KAR 5:076. On May 17, 1995, an Order was issued by the Commission giving all parties 15 days in which to respond to the attached staff report. Comments were received from the intervenors, Mr. Robert French and Mrs. Clifford Harris. On June 30, 1995, the Commission issued an Order which denied the rates proposed by Cardinal, but which granted the rate increase recommended in the staff report.

On July 17, 1995, pursuant to KRS 278.400, an Application for Rehearing was filed by counsel, Hon. George Long, purportedly on behalf of the intervenors, Mr. French and Mrs. Harris. (Attachment 1). Based on this application, rehearing was granted by the Commission on August 4, 1995. On September 14, 1995, the Commission was informed by Mr. French that he was not represented by Mr. Long. (Attachment 2). On October 2, 1995, the Commission was informed by Mrs. Harris that she was not represented by Mr. Long. (Attachment 3). Also on October 2, 1995, Mr. Long informed

the Commission that he was attempting to resolve the question concerning his representation. (Attachment 4).

Due to the apparent confusion, by Order of the Commission dated October 12, 1995, the parties in question were given fifteen days to clarify counsel's representation. During this time, the Commission received a letter from Mr. French reconfirming that Mr. Long was not representing him as counsel in this case. (Attachment 5). According to Mr. French:

Mr. Long was contacted at the beginning by Mr. Tim Nuckolls for representation in regard to this case. Later, I decided that Mr. Long would not represent me. Mr. Long responded to this case in good faith per letter to you dated July 14, 1995. (Application for Rehearing). I regret any inconvenience to Mr. Long in regard to this case.

No further correspondence was received from Mrs. Harris concerning Mr. Long's representation. The Commission must assume that Mrs. Harris' position has not changed from her earlier letter stating that Mr. Long is not representing her as counsel. Regardless, on November 6, 1995, the Commission received a Notice of Withdrawal from Mr. Long stating that he represents neither Mr. French or Mrs. Harris. (Attachment 6). Mr. Long therefore does not represent a party to this proceeding. Mr. Nuckolls, referred to by Mr. French in his most recent letter, is not a party to this proceeding nor does he have any interest in this proceeding.

According to CR 17.01, "Every action shall be prosecuted in the name of the real party in interest . . . ." The real party in

interest is the party who, by substantive law, possesses the right sought to be enforced.

In order to support an action, the interest of the party plaintiff must be present or substantial interest, as distinguished from a mere expectancy. 59 Am.Jur.2d, Parties, Section 28. A party plaintiff must have a real, direct, present and substantial right or interest in the subject matter of the controversy. 67 C.J.S. Parties Section 6 [1950 ed.]. Winn v. First Bank of Irvington, Ky.App., 581 S.W.2d 21, 23 (1978).

Rehearing was granted by the Commission on the mistaken belief that Mr. Long represented the intervenors, both of whom were real parties in interest, when in fact he did not. As no real party in interest requested rehearing in this case within the time allowed by statute, rehearing should never have been granted. This case, currently before the Commission on rehearing, should therefore be dismissed with prejudice.

While the intervenors' interest and participation have been appreciated, rehearing was not properly requested. Furthermore, their concerns were unsupported by the evidence. The rates established by the Order of June 30, 1995, as corrected in Appendix A to be entered nunc pro tunc, attached hereto and incorporated herein, are the fair, just, and reasonable rates for Cardinal. Due to a typographical error, the incorrect rates were contained in the appendix attached to the June 30, 1995, Order.

IT IS THEREFORE ORDERED that:

1. This case, currently before the Commission on rehearing, is dismissed with prejudice.

2. The rates contained in Appendix A are approved nunc pro tunc for service rendered by Cardinal on and after June 30, 1995.

3. Any rates charged over and above the rates contained in Appendix A for service rendered by Cardinal since June 30, 1995, shall be credited to the customers' accounts.

Done at Frankfort, Kentucky, this 27th day of November, 1995.

PUBLIC SERVICE COMMISSION

Robert M. Davis  
Vice Chairman

Linda K. Breathitt  
Commissioner

Chairman Overbey dissents from the decision of the Commission in this case.

George Edward Overbey, Jr.  
Chairman

ATTEST:

Don Mills  
Executive Director

## APPENDIX A

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 95-081 DATED NOVEMBER 27, 1995.

The following rates and charges are prescribed for the customers in the area served by Purchase Public Service Corporation d/b/a Cardinal Group. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under authority of this Commission prior to the effective date of this Order.

#### CUSTOMER CLASSIFICATION

<u>Residential Customers</u>	\$29.25 per Month
<u>Commercial Customers</u>	29.25 Residential Equivalent*

\*Commercial customers are billed at the residential rate for each residential equivalent, or 12,000 gallons. For example, a commercial customer who used 26,000 gallons would be billed at a rate of 2.17 times the residential rate.

RECEIVED

JUL 17 1995

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE  
COMMISSION

In the Matter of:

THE APPLICATION OF PURCHASE PUBLIC )  
SERVICE CORPORATION D/B/A CARDINAL )  
GROUP FOR A RATE ADJUSTMENT PURSUANT )  
TO THE ALTERNATIVE RATE FILING )  
PROCEDURE FOR SMALL UTILITIES )

CASE NO. 95-081 RECEIVED

JUL 17 1995

APPLICATION FOR REHEARING

GENERAL COUNSEL

COME Robert French and Mrs. Clifford Harris, by and through their attorney, George E. Long, II, pursuant to KRS 278.400, and file their Application for a Rehearing of the rates adopted in that order dated June 30, 1995.

As the Commission is aware, due to a misunderstanding of French and Harris, they were denied, not intentionally, but as a matter of circumstance, the right to present any evidence before the Commission.


First, they requested a hearing through a letter written by Mr. Tim Nuckolls on their behalf, which was rejected because Mr. Nuckolls is not authorized to make a presentation before the Commission.

Second, Mr. Don Mills, Executive Director, issued an order allowing an additional seven (7) days to provide additional comments or to request a hearing, which was forwarded to French and Harris. Simultaneously a letter was forwarded to Nuckolls advising him that he was not authorized to represent Harris and French before the Commission, but that they would have additional time to secure counsel to make such a request. The letter going to Mr. Nuckolls had no time limitation and he was not aware of the seven (7) days which was set out in the letter to French and Harris. Mrs. Harris was on

vacation when the order was set out and did not actually receive it until after the seven (7) days had elapsed.

WHEREFORE, Robert French and Mrs. Clifford Harris respectfully request the Commission to arrange for an informal hearing in order to allow them to present evidence before the Commission that they believe would effect the order and rate structure adopted by the Commission on June 30, 1995.

EXECUTED this 14th day of July, 1995.

  
\_\_\_\_\_  
GEORGE E. LONG II  
Attorney At Law  
P. O. Box 447  
Benton, Kentucky 42025  
(502) 527-5500

CERTIFICATE OF SERVICE

This is to certify that the foregoing Application for Rehearing was served by mailing same to the Hon. Don Mills, Executive Director, Public Service Commission, P. O. box 615, Frankfort KY 40602, on this the 14th day of July, 1995.

  
\_\_\_\_\_  
GEORGE E. LONG II

September 9, 1995

Don Mills  
Executive Director  
Public Service Commission  
730 Schenkel Lane  
Frankfort, KY 40602

Re: Case No.95-081

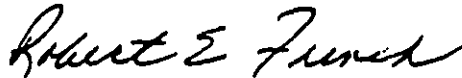
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SEP 14 1995

PUBLIC SERVICE  
COMMISSION

Dear Mr. Mills:

I am replying to the letter I received from you dated August 29, 1995. Mr. George Long, Esq. will not be representing me as counsel in regard to this case. I was under the assumption the Public Service Commission attorney would represent the people of Golden Acres Subdivision. If this is not true, the situation seems to be "Taxation without Representation". To restate what I said in a previous letter, the amount of increase is unfair to the homeowners of Golden Acres Subdivision.



Robert E. French  
328 Golden Acres Loop  
Calvert City, KY 42029

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SEP 15 1995

GENERAL COUNSEL



September 28, 1995  
Paducah, Ky. 42001.

Re: Case No. 95-081

Dear Stan Mills,

I am writing to inform you  
that George E. Long is not representing  
me (Mable Harris) as counsel.

This should clarify the matter  
for the Commission.

Sincerely,  
Mrs. Mable Harris  
1510 Kimbrell Drive  
Paducah, Ky 42001

RECEIVED

OCT 05 1995

GENERAL COUNSEL

**RECEIVED****OCT 08 1995****PUBLIC SERVICE TAX  
COMMISSION (502) 527-4333****GEORGE E. LONG, II**

Attorney-at-Law  
908 POPLAR STREET  
P. O. BOX 447  
BENTON, KENTUCKY 42025

PHONE  
(502) 527-3500

JEFFREY G. EDWARDS  
OF COUNSEL

**September 29, 1995**

Hon. Don Mills, Executive Director  
Public Service Commission  
730 Schenkel Lane  
P. O. Box 615  
Frankfort KY 40602

In Re: Case No. 95-081

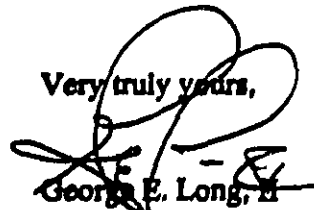
Dear Mr. Mills:

In response to your letter of September 26, 1995, please be advised that I have in my file a limited letter of representation purportedly signed by Mrs. Clifford Harris and Mr. Robert French. I agreed to the limited representation when Mr. Tim Nuckolls advised me he had received letters to the effect that he could not file any appearance or documents in this case for Mrs. Harris and Mr. French. I advised Mr. Nuckolls I would only file documents on their behalf if they would execute a representation agreement, which was returned to me by Mr. Nuckolls signed by Mr. French and Mrs. Harris.

If Mr. French does not want me to represent him in this matter, he certainly has that right, but I will require some writing from him to that effect. By copy of this letter I am sending Mr. French a copy of the letter forwarded to me with the signature of Robert French on it and request him to clarify this matter with a letter to both of us.

I am also forwarding a copy of the representation agreement to Mrs. Clifford Harris so she can review it in determining her response to your letter of September 26, 1995. I certainly want this question resolved before I take any further action or file any other documents on behalf of Mr. French and Mrs. Harris in this case. Since the representation agreement is between me and Mr. French and Mrs. Harris, I am only forwarding them a copy of that agreement. I look forward to clearing this matter up without delay.

Very truly yours,



George E. Long, II

GEL:cg22

cc Mrs. Clifford Harris w/Enclosures  
Mr. Robert French w/Enclosures  
Mr. Tim Nuckolls w/Enclosure

October 16, 1995

RECEIVED

OCT 19 1995

PUBLIC SERVICE  
COMMISSION

Mr. Don Miller

Executive Director

Public Service Commission

730 Schenkel Lane

Frankfort, Ky. 40602

RECEIVED

OCT 20 1995

GENERAL COUNSEL

Re: Case No. 95-08

Dear Mr. Miller:

This is to reconfirm that Mr. George Long, Esq. will not be representing me as counsel in regard to this case. Mr. Long was contacted at the beginning by Mr. Tim Nicholls for representation in regard to this case. Later, I decided that Mr. Long would not represent me. Mr. Long responded to this case in good faith per letter to you dated July 14, 1995 (application for rehearing). I regret any inconvenience to Mr. Long in regard to this case.

Robert E. French  
328 Golden Acres Lane  
Calverton City, Ky. 42022

Copies to: Mr. George Long, Esq.  
908 Poplar Street  
Benton, Ky. 42025

ATTACHMENT 5

## COMMONWEALTH OF KENTUCKY

**RECEIVED**

BEFORE THE PUBLIC SERVICE COMMISSION NOV 0 1995

**GENERAL COUNSEL**

In the Matter of:

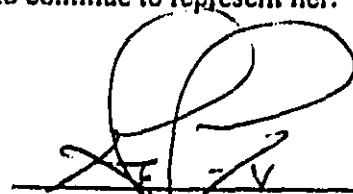
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GROUP FOR A RATE ADJUSTMENT PURSUANT ) CASE NO. 95-081  
TO THE ALTERNATIVE RATE FILING )  
PROCEDURE FOR SMALL UTILITIES )

**NOTICE OF WITHDRAWAL OF ATTORNEY GEORGE E. LONG, II**

PLEASE take notice that the undersigned is hereby withdrawing as attorney of record in this matter for the Intervenor, Robert French and Mrs. Clifford Harris, for the following reasons:

1. The Intervenor, Robert French, on October 16, 1995, filed a statement with the PSC stating that he no longer wanted representation in this case.
2. That since the Intervenor, Mrs. Clifford Harris, signed a representation agreement with the undersigned, she has failed to respond to requests from the undersigned and the PSC concerning representation in this case. As a result of her refusal to correspond or otherwise communicate with the undersigned, it will not be possible to continue to represent her.

EXECUTED this 30<sup>th</sup> day of November, 1995.



\_\_\_\_\_  
GEORGE E. LONG II  
Attorney At Law  
P. O. Box 447  
Benton, Kentucky 42025  
(502) 527-5500

# **CERTIFICATE OF SERVICE**

This is to certify that the foregoing was served by mailing a true and correct copy of same to the Hon. Don Mills, Executive Director, Public Service Commission, P. O. Box 615, Frankfort, Kentucky, Hon. John Steffen, Public Service Commission, P. O. Box 615, Frankfort, Kentucky, Mr. Robert E. French, 328 Golden Acres Loop, Calvert City, Kentucky 42029, Mrs. Clifford Harris, 1510 Kimbrell Drive, Paducah, Kentucky 42001, on this the 3 day of November, 1995.

  
GEORGE E. LONG II

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